

REMARKS

The Examiner's Action mailed on October 7, 2003 has been received and its contents carefully considered.

In this Amendment, Applicant has amended Claims 18, 19, 21 and 29. Claims 1, 11, 18, 23, 27 and 29 are the independent claims. Claims 2-6 and 8-10 depend upon Claim 1, whilst Claim 7 depends upon Claim 6. Claims 12-14 and 16 depend upon Claim 11, whilst Claim 15 depends upon Claim 14. Claims 19 and 21-22 depend upon Claim 18, whilst Claim 20 depends upon Claim 19. Claims 24-26 depend on Claim 23 and Claim 28 depends on Claim 27. Claims 1-29 remain pending in the application with changes thereto as noted above. For at least the following reasons, it is submitted that this application is in condition for allowance.

Initially, it is noted that this Amendment has been prepared using the requested new format. If there are any irregularities in this format, it would be greatly appreciated if Applicant's Counsel would be so advised.

a. **Rejection of Claims 18, 19, 22, and 29 under 35 U.S.C. § 102(b)**

The Examiner rejected Claims 18, 19, 22, and 29 under 35 U.S.C. § 102(b). The Examiner states: "Claims 18, 19, 22, and 29 are rejected under 35 USC 102(b) as being anticipated by US Re. 34,816 issued to Poettgen. Claim 18 is drawn to a blackout and thermal drapery comprising (a) a metallized film, (b) a first fabric coupled to one side of said film, and (c) a second fabric coupled to the other side of said film. Claim 19 limits the metal to being aluminum. Claim 22 limits the film to polypropylene. Claim 29 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) providing a first fabric, (d) coupling said first

AMENDMENT

- 7 -

fabric to one side of said metallized film, (e) providing a second fabric, and (f) coupling said second fabric to the other side of said metallized film. Poettgen discloses a lightweight reflective drape comprising an aluminum layer vacuum deposited onto a first thermoplastic film layer, a second thermoplastic layer on the opposite of said metal, and outer layers of nonwoven fabric (col. 5, lines 7-34). The thermoplastic film may be polypropylene (col. 5, line 35-40). The nonwoven fabric layer is preferably absorbent (col. 5, lines 53-60). In a preferred embodiment the second thermoplastic film layer is omitted and the fabric is coupled to the aluminum layer (col. 6, lines 3-6). Thus, claims 18, 19, 22, and 29 are anticipated by the Poettgen reference."

In response, Applicant notes that Poettgen US Re. 34,816 does not disclose a first layer of fabric and a second layer of fabric sandwiching a metallized film, which is on a thermoplastic film, but rather Poettgen discloses a "non-conductive aluminum and a first and second adjacent layer 20,20' comprise a thermoplastic material. A non-woven layer of absorbent material 22 is attached to the second adjacent layer 20'. Those skilled in the art will recognize that the non-woven layer of absorbent material 22 may be attached to either the first or second adjacent layer 20, 20'." (col. 5, lines 7-15). Again, Poetggen discloses "The non-woven layer of adsorbent material 22 may be attached to the first or second adjacent layer 20, 20'." (col. 5, lines 53-54). Finally, Poetggen discloses "the second adjacent layer 20' is omitted and the non-woven layer of adsorbent material 22 is attached to the core layer 18 of non-conductive aluminum" (col.6, lines 4-6). There simply is no portion of the Poettgen patent that discloses or suggests Applicant's blackout and thermal drapery as defined in independent Claims 18 and 29. Applicant's blackout and thermal drapery as claimed in independent Claims 18 and 29 has a film coated on both sides of the film with a metal layer, and two layers of fabric, where one fabric is on one side of the metal layer attached to the film, and a second fabric is attached to a metal layer on the other side of the film, which is not anticipated by Poettgen's disclosed structure contrary to what is alleged by the Examiner. Since Claims 19 and 22 depend from independent Claim 18 and

AMENDMENT

- 8 -

thus incorporate the patentable features thereof, therefore, both dependent Claims 19 and 22 are also patentable over Poettgen.

Furthermore, the Examiner states: "Claims 18, 22, and 29 are rejected under 35 USC 102(b) as being anticipated by US 3,718,528 issued to Bergstrom. Bergstrom discloses a radiation filter laminate comprising a plastic film that is coated with a thin metallic layer and reinforced with a textile fabric on either one or both sides thereof (col. 1, lines 62-65). The plastic film may be a polyolefin film (i.e., polypropylene or polyethylene) (col. 1 line 66-col. 2, line 11). The fabric is may be a nonwoven fabric (col. 2, lines 59-64). Thus, claims 18, 22, and 29 are anticipated by the Bergstrom disclosure."

In response, Applicant has amended Claims 18, 19, 21 and 29 by adding the further feature of a "light impermeable" metalized film and also amended Claim 29 by adding the feature of metalizing said first side of said film and said second side of said film "for providing a light impermeable metalized film" to patentably distinguish over Bergstrom US 3,718,528. Bergstrom states the "infrared reflecting material comprising a laminate which is transparent to light ..." (col. 5, lines 1-2) and is a "light permeable but infra-red reflecting coating" (col. 5, line 9) which clearly defines the coating placed on the plastic film as not being a light barrier, contrary to the light impermeable feature defined in Applicant's claims, thereby obviating the Examiner's rejections to Claims 18, 22 and 29. Support for these amendments is found in the Specification on page 9, line 22. These amendments are intended to more patentably distinguish these claims of the Applicant over the cited prior art and, therefore, no reduction in scope of the remaining claims is intended.

For the foregoing reasons, it is respectfully submitted that the rejections of Claims 18, 19, 22 and 29, under 35 U.S.C. § 102(b), have been overcome. Withdrawal of the rejections on this basis is believed to be in order and is courteously requested.

AMENDMENT

- 9 -

b. Rejection of Claim 20 under 35 USC §102 (b) and 35 USC §103 (a)

The Examiner rejected Claim 20 under 35 USC §102 (b) as being anticipated by, or in the alternative, under 35 USC 103 (a) as being unpatentable over the cited Poettgen reference. The Examiner states: "Claim 20 limits the aluminum to having an optical rating of 1.5-4.0. Poettgen is silent with respect to the claimed optical rating of the aluminum layer." The Examiner alleges: "However, it is reasonable to presume that said rating is inherent to the invention of Poettgen since the optical rating is a property inherent to the aluminum. In the alternative, the claimed optical rating would have obviously been present once the Poettgen invention is provided."

In response, with reference to the rejection of Claim 20 under 35 USC §102 (b), since Poettgen does not have the same features as defined by the Applicant (see discussion above) in independent Claim 18, and Claim 20 depends from independent Claim 18, Claim 20 can not be anticipated by or deemed to be considered as obvious in view of Poettgen. For the foregoing reasons, it is respectfully submitted that the invention defined by dependent Claim 20 is not anticipated by or rendered obvious by Poettgen and withdrawal of the rejection of Claim 20 under both 35 U.S.C. § 102 (a) and 35 U.S.C. § 103 (a) is believed in order and courteously requested.

Again, Applicant respectfully traverses the Examiner's rejection of Claim 20 under 35 USC §103 (a). Applicant notes that Poettgen is a "reflective surgical drape" whose purpose is to "reduce the rate of heat loss in human patients during a variety of surgical procedures" which in no way resembles a blackout and thermal drapery (this is truly non-analogous art). Poettgen is obviously silent on the optical rating of the aluminum layer because the function of the aluminum layer is to be a thermal barrier rather than to be an optical barrier as defined by the Applicant. Poettgen has neither motivation, nor suggests nor teaches an optical function for the aluminum layer and therefore teaches away from Applicant's disclosure. For the foregoing reasons, it is respectfully

AMENDMENT

- 10 -

submitted that the invention defined by dependent Claim 20 is not obvious and withdrawal of the rejection of Claim 20 under 35 U.S.C. § 103 (a) is believed in order and courteously requested.

In view of the foregoing, it is apparent that Poettgen does not anticipate, does not teach, suggest, or render obvious the unique combination of features now recited in pending Claim 20 which depends from independent Claim 18. Accordingly, it is respectfully requested that the rejections of Claim 20 under 35 U.S.C. § 102(b) and/or 35 U.S.C. § 103(a) be withdrawn.

c. Rejection of Claim 21 under 35 USC §103 (a)

The Examiner rejected Claim 21 under 35 USC 103 (a) as being unpatentable over the cited Poettgen reference. The Examiner states: "Claim 21 limits the metal to having a thickness of 0.0002-0.03 mm." The Examiner alleges: "Poettgen teaches the metal layer to be about 300 Angstroms (0.00003 mm). However, it would have been obvious to one of ordinary skill in the art to modify the disclosed thickness of the aluminum. Motivation to do so would be to improve the heat retaining properties by increasing the thickness."

Applicant respectfully traverses the rejection of Claim 21 under 35 USC §103 (a). Applicant notes (see above discussion) that Poettgen is a "reflective surgical drape" whose purpose is to "reduce the rate of heat loss in human patients during a variety of surgical procedures" which in no way resembles or even suggests a blackout and thermal drapery as claimed by the Applicant (this is non-analogous art). Applicant has amended Claim 21 to more clearly define the metallized film as being "light impermeable". This amendment is intended to more patentably distinguish over the cited prior art and no reduction in scope of the remaining claims is intended. Respectfully, Poettgen's motivation to increase the thickness of the metal layer is not disclosed nor suggested and, therefore, it is a matter of gross speculation to say that such an increase in thickness (about 10 times) is possible in Poettgen.

AMENDMENT

- 11 -

Furthermore, Poettgen does not disclose that such a significant increase in thickness is necessary or desirable. In fact, the increased thickness of Applicant's claimed metal layer appears to improve the light barrier effect in Applicant's blackout and thermal drapery, which is neither suggested nor taught by Poettgen, since according to the Examiner, "Poettgen is silent with respect to the claimed optical rating of the aluminum layer." Therefore, Poettgen teaches away from Applicant's claimed invention.

In view of the foregoing, it is apparent that Poettgen, does not teach, suggest, or render obvious the unique combination of features now recited in pending Claim 21 which depends from independent Claim 18. Accordingly, it is respectfully requested that the Examiner's rejection of Claim 21 under 35 U.S.C. § 103(a) be withdrawn.

d. Rejection of Claims 19-21 under 35 USC §103 (a)

The Examiner rejected Claims 19-21 under 35 USC 103 (a) as being unpatentable over the cited Bergstrom reference. The Examiner alleges: "Bergstrom does not explicitly teach aluminum, and its optical rating, as the preferred metal. However, it would have been obvious to one skilled in the art to employ aluminum since it has been held that selection of any known material suitable for the intended use is obvious to one skilled in the art." Furthermore, the Examiner alleges: "With respect to claim 21, it would have been obvious to one skilled in the art to employ the claimed thickness since where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art."

Applicant respectfully traverses the Examiner's rejection of Claims 19-21 under 35 USC §103 (a). Applicant notes that Bergstrom does not disclose a drapery (only a radiation filter) whose purpose is to "transmit visible light and reflect infra-red radiation" which in no way resembles a blackout and thermal drapery (this is also truly non-analogous art). Bergstrom is focused on: "The

AMENDMENT

- 12 -

previously known arrangements for obtaining heat reflection have thus required the production of special types of glass or the use of expensive or difficulty produced multi-glass structures." (col.1, lines 33-36). Further on, Bergstrom states: "Since the material can be used in the form of a curtain, which will permit light to pass therethrough but not heat ..." (col.1, lines 48-50). Applicant has amended Claims 19 and 21 to more clearly define the metalized film as being "light impermeable". Since Claim 20 depends from Claim 19, the property of aluminum used in the metalized film also incorporates the feature of being "light impermeable". This amendment is intended to more patentably distinguish over the cited prior art and no reduction in scope of the remaining claims is intended. Respectfully, Bergstrom's lack of use of aluminum as his infrared radiator, which on purpose transmits visible light is deliberate and to say one skilled in the art would pick aluminum as an infrared radiator, which does not transmit visible light is a matter of speculation since no-one has done this except the Applicant (even though Bergstrom dates back to 1973). Besides, as stated above, the purpose of using aluminum by the Applicant is different to Bergstrom. Furthermore, Bergstrom does not disclose that a specific thickness of the metal layer is necessary or desirable. Instead, Applicant teaches that the thickness of the metal layer results in the light barrier effect in Applicant's blackout and thermal drapery, which is neither suggested nor taught by Bergstrom, since according to the Examiner, "Bergstrom does not explicitly teach aluminum, and its optical rating, as the preferred metal". Bergstrom is silent regarding the thickness of the metal layer, but instead says "It is apparent the choice of metal is of great importance" (col. 4, lines 14-15). Therefore, Bergstrom teaches away from Applicant's claimed invention both with regard to the use of aluminum and the thickness of the metal layer.

In view of the foregoing, it is apparent that Bergstrom, does not teach, suggest, or render obvious the unique claimed combination of features now recited in pending Claims 19 and 21 which depend from independent Claim 18

AMENDMENT

- 13 -

and pending Claim 20 which depends from dependent Claim 19. Accordingly, it is respectfully requested that the rejection of Claims 19-21 under 35 U.S.C. § 103(a) be withdrawn.

e. Rejection of Claims 11, 13-17, and 27 under 35 USC §103 (a)

The Examiner rejected Claims 11, 13-17, and 27 under 35 USC 103(a) as being unpatentable over WO 83/00356 issued to Ryan et al. in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al. The Examiner states: "Applicant claims a blackout and thermal drapery comprising (a) a metallized film, (b) a fabric coupled to one side of said film, and (c) a layer of acrylic latex coupled to the other side of said film. Claim 13 limits the acrylic latex to being flame retardant. Claim 14 limits the metal to being aluminum. Claim 15 limits the aluminum to having an optical rating of 1.5-4.0. Claim 16 limits the metal to having a thickness of 0.0002-0.03 mm. Claim 17 limits the film to polypropylene. Claim 27 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) providing a fabric, (d) coupling said fabric to one side of said metallized film, (e) coating a layer of acrylic latex onto the other side of said metallized film."

The Examiner alleges: "Ryan discloses an insulation material comprising a substrate having a first layer of a metallic material thereon and a second layer overlying said metallic material (abstract). The substrate may be a woven or nonwoven fabric (bottom of page 3), while the metallic layer may be a laminate comprising a metallized film (page 4, lines 1-5). Said metal may be aluminum (page 4, lines 5-6). The second layer may be a clear, dyed, or pigmented lacquer, but is preferably a pigmented poly amide coating (page 6, last paragraph). The second layer function for aesthetic purposes in covering up the metallic layer, maintains an infrared transmitting gap on the face of the metal surface, and protects said metallic layer from the environment (page 2, last paragraph and page 7, 1st paragraph). The inventive insulation material is suited for use as a window covering, such as a curtain or blind (page 8, line 2 and 12-16). Thus, Ryan teaches the presently claimed invention with the exception of the

AMENDMENT

- 14 -

acrylic latex layer. Pigmented acrylic latexes are well known in the art of insulating curtains and blinds. For example, DeMott teaches known blackout fabrics for curtains comprise a fabric substrate coated with a titanium dioxide pigmented latex and a carbon black pigmented latex (col. 1, lines 31-42). Similarly, Leaderman teaches known blackout drapes comprise a fabric substrate coated with one or more layers of an acrylic latex, such as an opaque carbon black acrylic coating thereon (col. 1, lines 19-42). Thus, it would have been obvious to one skilled in the art to employ a pigmented acrylic latex coating rather than the pigmented polyamide coating since said acrylic coatings are known in the art as suitable materials for the intended use. Therefore, claims 11, 14, and 27 are rejected as being obvious over the cited prior art."

The Examiner further alleges: "With respect to claim 13, Leaderman also teaches said acrylic latex may include a fire retardant material (col. 1, lines 31-34). Hence, said claim is rejected over the cited prior art as being obvious." The Examiner further alleges: "With respect to claim 15, it is argued that the claimed optical rating is met by Ryan's teaching of aluminum since said optical rating is a property inherent to the metal itself. Thus, claim 15 is rejected along with claim 14." Furthermore, the Examiner alleges: "Ryan fails to teach the metallic layer thickness or that the film is polypropylene. However, with regard to the thickness, it is argued that this feature is a result effective variable. An increase in thickness would increase thermal insulation properties, weight, and stiffness of the fabric laminate, while decreasing said thickness would decrease these properties. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Thus, claim 16 is rejected." Finally the Examiner alleges: "With regard to the film being polypropylene, it would have been obvious to one skilled in the art to substitute polypropylene film for the polyester film disclosed by Ryan. Therefore, claim 17 is also rejected over the cited prior art."

Applicant respectfully traverses the Examiner's rejection of Claims 11, 13-17, and 27 under 35 USC §103 (a). Applicant notes that Ryan "comprises a substrate having at least a proportion of the area of one surface thereof coated with a first layer of a metallic material which is at least partially overlaid by a second layer of material which masks

AMENDMENT

- 15 -

the overlaid metallic material without substantially reducing the insulative effect of the metallic material" (Abstract) and that Ryan clearly states: "The material of the invention is eminently suitable for use in the manufacture of roller-blinds in which case the substrate is flexible and the whole of one major surface of the substrate is wholly overlaid by the metallic material and the metallic material is wholly overlaid by the said second layer." (Abstract). Additionally, Ryan states: "The use of laminated material according to the invention and in the form of curtains or blinds provides an energy saving device for windows, which not only considerably reduces heat losses from the house, but also reduces solar heat gains dramatically." (page 8, lines 12-16), and further Ryan states: "In summer, it should be pulled down sufficiently to block out direct sunlight yet allowing natural light to enter the building. In winter, the blind should be fully drawn at night to minimize heat losses and raised in the day to allow the sun to warm up the building." (page 10, lines 7-11). Therefore, Ryan in no way discloses or resembles a blackout and thermal drapery (Ryan is truly non-analogous art). Ryan does not suggest or teach a blackout effect for a drapery. In addition, Ryan's structure has no acrylic latex layer on one side of the metalized film as admitted by the Examiner. DeMott is "a barrier fabric composite especially suited to use for stain-resistant fabrics for institutional or commercial settings such as hospitals, nursing homes, and restaurants", which in no way resembles a blackout and thermal drapery (this is also non-analogous art). In passing, DeMott mentions "a specialized application in which the fabric composite contains an opacifier, such as carbon black, to absorb light" (col. 5, lines 27-29), which is clearly not a metallic film as required by the Applicant (Claim 11). Similarly Leaderman is "a blackout drapery lining including a first textile material, a first adhesive layer having an opaque pigment adhered to the first textile material and a second textile material adhered to the first adhesive layer, with the possibility of multiple adhesive layers having further pigments sandwiched between the first textile material and the second textile material." (see Figs. 2-4, and col. 2, 49-67, col. 3, lines 1-67 and col. 4, lines 1-8), which in no way resembles a blackout and thermal drapery (this is non-analogous art) as claimed by the Applicant. Leaderman achieves a blackout effect for a drapery lining by providing an adhesive having a

AMENDMENT

- 16 -

pigment, rather than using a metalized film. The Examiner states: "Pigmented acrylic latexes are well known in the art of insulating curtains and blinds" and couples this with DeMott which allegedly "teaches known blackout fabrics for curtains comprise a fabric substrate coated with a titanium dioxide pigmented latex and a carbon black pigmented latex" and Leaderman which allegedly "teaches known blackout drapes comprise a fabric substrate coated with one or more layers of an acrylic latex, such as an opaque carbon black acrylic coating thereon (col. 1, lines 19-42)", resulting in a conclusion that "it would have been obvious to one skilled in the art to employ a pigmented acrylic latex coating rather than the pigmented polyamide coating since said acrylic coatings are known in the art as suitable materials for the intended use."

First, Applicant has not stated the acrylic latex is pigmented in any fashion. Applicant asserts the blackout effect results from the unique combination of a metalized film, a fabric layer and acrylic latex as defined in Claim 11. Second, both DeMott (published in 1999) and Leaderman (published in 1998) had the benefit of the teachings of Ryan published in 1983, and neither DeMott and Leaderman in combination or individually suggested or taught the use of a metalized film. Third, both DeMott and Leaderman in combination with the teachings of Ryan do not suggest or teach the unique combination of a metallic film, fire-retardant (or non fire-retardant) acrylic latex and fabric as specifically defined by the Applicant in independent Claims 11 and 27 and dependent Claims 13-17 which depend from independent Claim 11. Both DeMott and Leaderman teach away from the use of a metallic film to provide a blackout effect. As to the rejection of independent Claim 27, since independent Claim 27 is a method claim reciting how the features of independent Claim 11 are combined in a method to make Applicant's blackout and thermal drapery, it follows that similar arguments apply to Claim 27 as discussed above for independent Claim 11. Given these facts, it is unfair to the Applicant to allege that Ryan in combination with DeMott and Leaderman render Applicant's Claims 11, 13-17 and 27 obvious.

In view of the foregoing, it is apparent that DeMott and Leaderman in combination with Ryan, do not teach, suggest, or render obvious the unique combination now recited in pending independent Claims 11 and 27 and

AMENDMENT

- 17 -

dependent Claims 13-17 which depend from independent Claim 11 and therefore incorporate all the features of independent Claim 11. Accordingly, it is respectfully requested that the Examiner's rejection of Claims 11, 13-17 and 27 under 35 U.S.C. § 103(a) be withdrawn.

f. Rejection of Claims 1, 4-9, and 23 under 35 USC §103 (a)

The Examiner rejected Claims 1, 4-9, and 23 under 35 USC 103(a) as being unpatentable over the three references combination of US 4,790,591 issued to Miller in view of US 5,902,753 issued to DeMott et al. and US 5,741,582 issued to Leaderman et al. The Examiner states: "Applicant claims a blackout and thermal drapery comprising (a) a metallized film, (b) a first acrylic latex layer coated onto one side of said film, and (c) a second layer of acrylic latex coated onto the other side of said film. Claims 4 and 5 limit the acrylic latex layers to being flame retardant. Claim 6 limits the metal to being aluminum. Claim 7 limits the aluminum to having an optical rating of 1.5-4.0. Claim 8 limits the metal to having a thickness of 0.0002-0.03 mm. Claim 9 limits the film to polypropylene. Claim 23 is drawn to a method of making a blackout and thermal drapery comprising (a) providing a film, (b) metallizing both sides of said film, (c) coating a first layer of acrylic latex to one side of the metallized film, and (d) coating a second layer of acrylic latex onto the other side of said metallized film. Miller discloses a light and heat shielding windshield cover comprising a flexible, light-impervious, metallized plastic film (col. 1, lines 7-12 and col. 2, lines 52-66). The thickness of the metallized film ranges from 12-15 microns (0.012-0.015 mm) (col. 5, lines 26-31). Said metallized film may be made from a polypropylene film (col. 5, lines 31-35). Additionally, the metallized film may be coated on one or both sides with a polymeric coating, such as polyethylene, polyester, polycarbonate, or nylon, in order to protect said metal from abrasion and wear (col. 5, lines 50-57 and col. 6, lines 36-39). The metal for the metallized layer may be any metal or metal compound which can be deposited on the polymeric film (col. 6, lines 32-36)."

AMENDMENT

- 18 -

The Examiner alleges: "Miller teaches the claimed invention with the exception that the polymeric coating is an acrylic latex coating. However, as noted above, said acrylic latex coatings are well known in the art of blackout curtains. Note the teachings of DeMott and Leaderman. Thus, it would have been obvious to one of ordinary skill in the art to substitute the polymeric coating of Miller with the known acrylic latex, in particular an acrylic which is fire retardant, in order to protect the metallized film and to enhance the light-shielding properties of the curtain. Therefore, claims 1, 4, 5, 8, and 9 are rejected." Additionally, the Examiner alleges: "it would have been obvious to employ aluminum as the metal for the metallized film, since aluminum is well-known in the art as being capable of coating a film. Hence, claims 6 and 7 are rejected."

Applicant respectfully traverses the Examiner's rejection of Claims 1, 4-9, and 23 under 35 USC §103 (a). Applicant notes that Miller is "a removable screen adapted to be attached to the interior of a vehicular windshield and configured to cover and correspond thereto for inhibiting the transfer of heat, solar energy, ultraviolet radiation and the like through the windshield into the interior of the associated vehicle." (Abstract) and "The flexible sheet may be composed of multiple layers of the metallized plastic film which are joined to define at least one sealed air pocket." (Abstract). Miller in no way resembles a blackout and thermal drapery lining (this is also non-analogous art). Miller does not suggest or teach a blackout effect for a drapery lining. In addition, Miller's structure has no acrylic latex layer on one side of the metallized film as admitted by the Examiner. Additionally, Miller defines "at least one sealed air pocket" (Abstract, see above), whereas Applicant's blackout and thermal drapery lining has no air pockets whatsoever. Miller issued in 1988 whilst DeMott and Leaderman issued in 1999 and 1998 respectively. Both Demott and Leaderman had the benefit of Miller's disclosure regarding a metallized plastic film wherein the plastic film may be polypropylene and wherein the thickness of the metallized film ranges from 12-15 microns. DeMott and Leaderman both disclose fabrics which allege possible blackout effect features, yet neither DeMott or Leaderman which date more than ten years after Miller describe or show in any way the use of a metallized film. In short, Applicant has uniquely and patentably

AMENDMENT

- 19 -

claimed a blackout and thermal drapery lining in a completely non-obvious way. Both DeMott and Leaderman in combination with the teachings of Miller do not suggest or teach the unique claimed combination of a metalized film, a first layer of fire-retardant (or non fire-retardant) acrylic latex coated to a first side of the metalized film; and a second layer of fire-retardant (or non fire-retardant) acrylic latex coated to a second side of the metalized film as specifically defined by the Applicant in independent Claims 1 and 23 and dependent Claims 4-9 which depend from independent Claim 1. Both DeMott and Leaderman teach away from the use of a metallic film to provide a blackout effect. As to the rejection of independent Claim 23, since independent Claim 23 is a method claim reciting how the features of independent Claim 1 are combined in method form to make Applicant's blackout and thermal drapery lining, it follows that similar arguments apply to Claim 23 as discussed above for independent Claim 1. Given these facts, it is unfair to the Applicant to allege that Miller in combination with DeMott and Leaderman render Applicant's Claims 1, 4-9 and 23 obvious.

In view of the foregoing, it is apparent that DeMott and Leaderman in combination with Miller, do not teach, suggest, or render obvious the unique combination now recited in pending independent Claims 1 and 23 and dependent Claims 4-9 which depend from independent Claim 1 and therefore incorporate all the features of independent Claim 1. Accordingly, it is respectfully requested that the Examiner's rejection of Claims 1, 4-9 and 23 under 35 U.S.C. § 103(a) be withdrawn.

g. Rejection of Claims 2, 3, 12, 24, 25, and 28 under 35 USC §103 (a)

The Examiner rejected Claims 12 and 28 under 35 USC 103(a) as being unpatentable over the four reference combination of the cited references Ryan, DeMott, and Leaderman as applied to claim 11 above, and in further view of US 4,560,245 issued to Sarver. The Examiner also rejected Claims 2, 3, 24, and 25 under 35 USC 103(a) as being unpatentable over the four reference combination of the cited references Miller,

AMENDMENT

- 20 -

DeMott, and Leaderman as applied to claim 1 above, and in further view of US 4,560,245 issued to Sarver. The Examiner states: "Claims 2 and 3 limit the first and second acrylic layers of claim 1 to being flocked, while claims 24 and 25 limit the method of claim 23 to further include the step of flocking the first and second acrylic layers. Claim 12 limits the acrylic layer of claim 11 to being flocked, while claim 28 limits the method of claim 27 to further include the step of flocking the acrylic layer."

The Examiner alleges: "Ryan, Miller, DeMott, and Leaderman do not teach a layer of flocked fibers on the acrylic latex layer. However, said flocking is known in the art. For example, Sarver teaches a vehicular windshield curtain comprising a light impervious sheet and a reflective outer surface (col. 2, lines 30-43). A layer of flocked fibers may be present on either the inner or outer layers of the curtain (col. 3, lines 2-10 and col. 6, lines 1-4). Thus, it would have been obvious to one skilled in the art to employ a flocked layer on the exterior of the invention disclosed by the combination of Ryan, DeMott, and Leaderman or the combination of Miller, DeMott, and Leaderman in order to provide an esthetically pleasing and soft surface. Therefore, claims 2, 3, 12, 24, 25, and 28 are rejected as being obvious over the cited prior art."

Applicant respectfully traverses the Examiner's rejection of Claims 2, 3, 12, 24, 25, and 28 under 35 USC §103 (a). Applicant notes that Sarver is "A special heat transfer inhibiting curtain for demountable positioning in juxtaposed coextending relationship with the interior surface of the windshield of a vehicle to reduce interior heat build-up in the vehicle when it is not operated." (Abstract). Sarver in no way resembles either a blackout and thermal drapery or a blackout and thermal drapery lining (this is non-analogous art). Sarver does not suggest or teach a blackout effect for a drapery or for a drapery lining as defined by the Applicant's claimed combination using a metalized film. Instead Sarver teaches "The light impervious or black-out sheet 46 may be formed of any suitable non-porous and flexible material, such as rubber, silicone, and the like." (col. 5, lines 42-44). Furthermore, Sarver teaches "This Roc-Lori material has the inner light impervious sheet formed of silicon with the

AMENDMENT

- 21 -

outwardly facing surface being white suede fibers which are applied by the well known flocking process" (col. 6, lines 1-4). As admitted by the Examiner, Sarver does not teach Applicant's first and second acrylic layers of independent Claim 1 being flocked or dependent method Claims 24 and 25 depending from the independent method Claim 23 to further include the step of flocking the first and second acrylic layers. Furthermore, as admitted by the Examiner, Sarver does not teach nor disclose the claimed features of Applicant's dependent Claim 12 which limits the acrylic layer of Claim 11 to being flocked or dependent Claim 28 which limits the method of independent Claim 27 to further include the step of flocking the acrylic layer. Instead the Examiner links together "Ryan, DeMott, and Leaderman as applied to claim 11 above, and in further view of US 4,560,245 issued to Sarver" to reject Applicant's dependent Claims 12 and 28, and Miller, DeMott, and Leaderman as applied to claim 1 above, and in further view of US 4,560,245 issued to Sarver" to reject Applicant's dependent Claims 2, 3, 24, and 25 as being obvious. The Examiner admits that not one of the combined cited references without Sarver disclose flocking applied to an acrylic layer or applied to any layer of material whatsoever. Sarver is dated 1985, about thirteen years before Leaderman, about fourteen years before DeMott and about three years before Miller, which all had the benefit of Sarver's disclosure. Given the length of time between Sarver and the cited references it seems that the obviousness alleged by the Examiner would have been disclosed as advantages in the disclosures of the cited references, at least "in order to provide an esthetically pleasing and soft surface" as alleged by the Examiner. Applicant strongly and respectfully objects to the Examiner's rejection of Claims 2, 3, 12, 24, 25, and 28 as being obvious using the combinations of Sarver and the cited references. Applicant reiterates that each cited reference as discussed above is non-analogous art applied against Applicant's claims, and therefore in combination the cited references are in no way a basis for an obviousness rejection.

In view of the foregoing, it is apparent that Ryan, DeMott, and Leaderman in further view of Sarver, and Miller, DeMott, and Leaderman in further view of Sarver, do not teach, suggest, or render obvious the unique combination now recited in pending dependent Claims 2 and 3 which depend from independent Claim 1 and

AMENDMENT

- 22 -

therefore incorporate all the patentable features of Claim 1, pending dependent Claim 12 which depends from independent Claim 11 and therefore incorporate all the claimed features of Claim 11, pending dependent Claims 24 and 25 which depend from independent Claim 23 and therefore incorporate all the claimed features of Claim 23, and pending dependent Claim 28 which depends from independent Claim 27 and therefore incorporate all the claimed features of Claim 27. Accordingly, it is respectfully requested that the Examiner's rejection of Claims 2, 3, 12, 24, 25, and 28 under 35 U.S.C. § 103(a) be withdrawn.

Applicant has now made an earnest attempt to place this application in condition for allowance. Therefore, Applicant respectfully requests, for the reasons set forth herein and for other reasons clearly apparent, allowance of Claims 1-29 now on file and that the application be passed to issue.

Should the Examiner feel that a telephone conference would help to expedite the prosecution of the application, the Examiner is hereby invited to contact the undersigned counsel to arrange for such an interview.

If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account No. 23-0830.

Respectfully submitted,



Harry M. Weiss
WEISS, MOY & HARRIS, P.C.
Registration No. 19, 497
Telephone: 702-878-7323
Facsimile : 702-878-4510

AMENDMENT

- 23 -